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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

COREY SHANNON BRATCHER,

Defendant and Appellant.

C085244

(Super. Ct. No. CRF170656)

A jury convicted defendant Corey Shannon Bratcher of assault, battery causing serious bodily injury, and corporal injury upon a person with whom he had a dating relationship. Defendant admitted a prior prison term enhancement allegation and the trial court sentenced him to five years in state prison.

Defendant now contends (1) there is insufficient evidence to support the prior prison term enhancement, and (2) the trial court should have stayed the sentence for assault pursuant to Penal Code section 654.¹ Although we find no merit to defendant's

¹ Undesignated statutory references are to the Penal Code.

first contention, we will modify the judgment to stay the sentence for the assault conviction and affirm the judgment as modified.

BACKGROUND

The victim and defendant began dating in 2016 and moved in together in 2017. On one occasion in March 2017, they began arguing while drinking alcohol and smoking marijuana. The victim was drunk, and the next thing she knew she was “leaking” from her nose. The victim realized she had been hit with a bottle of alcohol that was now cracked and lying on the floor. The victim hit defendant with a closed fist to defend herself. Defendant said she “shouldn’t have done that” and hit her with his fist two times on the back of her head, causing two knots to form. Defendant also hit her in the face a few times with his fists. The victim went to her friend’s house.

The friend testified that the victim showed up at her doorstep at 1:00 a.m. The victim was upset, scared, and dripping blood from her face. The cut on the victim’s nose was so deep that the friend could see the bone. The friend called 911. Photographs of the victim’s injuries were shown to the jury.

Defendant testified he was stunned when the victim punched him. He said he had a degenerative bone disease and risked paralysis or death from any injury to his head. He grabbed the victim by the waist to restrain her, but the victim kept trying to hit him. He said he released her and she picked up an empty whiskey bottle. According to defendant, he disarmed her but she bent his thumb, so he hit her.

During closing argument, the prosecutor argued that the count 2 charge of battery causing serious bodily injury was based on defendant hitting the victim in the nose. And the count 1 charge of assault with a deadly weapon was based on defendant using the whiskey bottle as a deadly weapon to assault the victim.

The jury convicted defendant of the lesser included offense of assault (§ 240, -- count 1), battery causing serious bodily injury (§ 243, subd. (d) -- count 2), and

corporal injury upon a person with whom he had a dating relationship (§ 273.5, subd. (a) -- count 3).

Immediately after the jury was dismissed, the trial court held a separate proceeding regarding a prior prison term enhancement allegation asserting a 2016 conviction in Yuba County for being a felon in possession of ammunition. (§§ 667.5, subd. (b), 30305, subd. (a).) Defense counsel informed the trial court that defendant wanted to admit the allegation. In explaining his constitutional rights, the trial court informed defendant he had the right to have a jury “listen to the evidence and decide if that prior prison commitment was true,” and defendant confirmed he understood. The trial court then asked defendant whether he wanted to admit that he was “previously convicted of a crime of being a felon in possession of ammunition in violation of [section 30305, subdivision (a)(1)] in the Superior Court of Yuba County on or about March 21, 2016, and that he served a separate term in state prison for that offense within the meaning of [section 667.5, subd. (b)].” Defendant asked if section 665 applied, and the trial court clarified it was section 667.5, subdivision (b). Defendant then asked if they were talking about the “strike law,” and his lawyer replied no. The trial court asked defense counsel to review section 667.5, subdivision (b) with defendant.

After a break, defendant confirmed he had time to go over section 667.5, subdivision (b) with his attorney and he was satisfied that he understood it. The trial court again asked defendant whether he would admit to the prior conviction and prison term within the meaning of section 667.5, subdivision (b). Defendant responded, “Yes, sir. I was convicted of that crime.” The trial court asked, “So you admit that?” Defendant responded, “Yes. The possession of ammunition, yes.” The trial court asked whether there was “[a]nything else” needed and, hearing no reply, accepted the admission.

In July 2017, a different judge presided over sentencing. There was initial confusion regarding the prior prison term enhancement because it was not referenced in

the probation report. But the prosecutor confirmed for the trial court that defendant had admitted the enhancement allegation. Defense counsel did not object. After reviewing the minutes from the prior hearing, the trial court agreed defendant admitted the enhancement allegation.

The trial court sentenced defendant to five years in state prison as follows: the upper term of four years for the count 2 battery causing serious bodily injury; the upper term of four years for the count 3 corporal injury, stayed pursuant to section 654; a concurrent 261 days for the count 1 assault; and an additional one year for the prior prison term enhancement. In staying sentence on count 3, the trial court noted that it was “not positive because I wasn’t the trial judge -- that the crime is parallel to the crime in Count 2.” The prosecutor, who was also not present during trial, said she believed the facts involving count 3 might be the same as count 2. The trial court said a consecutive term was not appropriate because, based on the probation report, the underlying facts appeared to be the same.

DISCUSSION

I

Defendant contends there is insufficient evidence to support the prior prison term enhancement. He argues he only admitted the prior conviction, not the prior prison term, and the prosecution presented no evidence of the prior prison term, such as a section 969b packet.

Defendant relies on *People v. Epperson* (1985) 168 Cal.App.3d 856, 864-865. In that case the defendant admitted his prior convictions but did not admit the prior prison term or the nonexistence of the five-year “washout” period under section 667.5, subdivision (b). (*Epperson*, at p. 864.) The court concluded the admissions did not include all the necessary elements under section 667.5, subdivision (b). (*Epperson*, at pp. 864-865.) The People agreed it was proper to strike the enhancement because the defendant had not reoffended within the required five-year period. (*Id.* at p. 865.)

But a different conclusion was reached in *People v. Carrasco* (2012) 209 Cal.App.4th 715 (*Carrasco*), disapproved on other grounds as noted in *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1518. The defendant in *Carrasco* admitted two prior convictions but did not admit separate prison terms for the priors or that he committed a new crime within the five-year washout period. (*Carrasco*, at p. 723.) Nevertheless, the information alleged each of the requisite facts, and during the plea colloquy the trial court referred to the priors as pursuant to section 667.5, subdivision (b). (*Carrasco*, at p. 724.) The defendant told the trial court that he understood that each prior could result in an additional year to his sentence, and he then admitted them. (*Ibid.*) The trial court found the prior convictions true “ ‘within the meaning of [section 667.5, subdivision (b)].’ ” (*Carrasco*, at p. 724.) Based on the totality of the circumstances, the appellate court concluded the defendant admitted the allegations, including all of the elements under section 667.5, subdivision (b). (*Carrasco*, at p. 724.)

This case is more like *Carrasco*. Just as in *Carrasco*, here the information alleged each of the requisite facts under section 667.5, subdivision (b). Moreover, here the jury had just issued its verdict and been dismissed when defense counsel informed the trial court that defendant wanted to admit the prior prison term enhancement allegation. The trial court asked defendant twice whether defendant admitted or denied the prior conviction and the prior prison term. When defendant initially expressed confusion about which statute applied to the enhancement, the trial court gave him time to meet with defense counsel to review section 667.5, subdivision (b). After a break, defendant confirmed he was satisfied that he understood section 667.5, subdivision (b). As the trial court took defendant’s admission, defendant and his counsel never said defendant was declining to admit an element of the section 667.5, subdivision (b) enhancement. During sentencing, the prosecutor reiterated that defendant had admitted the enhancement allegation, the trial court agreed after reviewing the minutes, and the trial court imposed

the enhancement. Throughout, defendant and his counsel did not object or indicate that defendant had only admitted the conviction but not the prior prison term.

Based on the totality of the circumstances, defendant's challenge to the prior prison term enhancement lacks merit.

II

Defendant also claims the trial court should have stayed the count 1 sentence for assault pursuant to section 654. He argues the assault was part of one indivisible act. Although the People initially counter that the contention is forfeited because defendant did not object during sentencing, a claim that a sentence violates section 654 may be raised for the first time on appeal. (*People v. Hester* (2000) 22 Cal.4th 290, 295; see also *People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17.)

Section 654 precludes multiple punishment for the same act violating more than one criminal statute. (*People v. Correa* (2012) 54 Cal.4th 331, 336-337.) In a case involving multiple offenses arising from the same act or intent, the court must impose sentence on each count and then stay the sentence on any count to which section 654 applies. (*People v. Jones* (2012) 54 Cal.4th 350, 353.) Where a defendant repeatedly commits discrete acts with a single objective or intent, such as multiple sexual assaults, the applicability of section 654 depends on whether the discrete acts were "separated by periods of time during which reflection was possible." (*People v. Trotter* (1992) 7 Cal.App.4th 363, 367-368; see also *People v. Harrison* (1989) 48 Cal.3d 321, 337-338.) If the trial court failed to make an express finding as to the intent or objective with which the crime at issue was committed, we may imply a finding of separate purpose or intent when supported by substantial evidence. (*People v. Pinon* (2016) 6 Cal.App.5th 956, 968.)

To determine what conduct the jury used to convict the defendant of each charged offense, we consider how the prosecutor argued the case to the jury. (*People v. Kelly* (2016) 245 Cal.App.4th 1119, 1131; *People v. Ortega* (2000) 84 Cal.App.4th 659, 665-

666.) The prosecutor made clear during closing argument that the count 2 battery charge was based on defendant hitting the victim in the nose. The count 1 assault with a deadly weapon charge was also based on defendant hitting the victim in the nose: the prosecutor argued defendant used a whiskey bottle as a deadly weapon to assault the victim.

Although the jury only found defendant guilty of simple assault with respect to count 1, the prosecutor did not suggest the jury could find defendant guilty of simple assault based on the hits to the victim's head.

Because the assault and battery were based on the same blow to the nose, we conclude section 654 requires a stay of the sentence for the count 1 assault.

DISPOSITION

The judgment is modified to stay the sentence for the count 1 assault conviction pursuant to section 654. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the judgment as modified, and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

 /S/
MAURO, J.

We concur:

 /S/
BLEASE, Acting P. J.

 /S/
MURRAY, J.